IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.314 OF 2001

DIST. SATARA

Bandu Hasan Tamobli, residing at)
Koyana Sidding Vasahat Oglewadi, Tal.)
Karad, Dist. Satara.) ... Appellant/Accused

Versus

1. The State of Maharashtra)
2. Govind Daji Bhise)
3. Mrs. Mangal Govind Bhise, both)
residing at Koyana Siding Vasahat,)
At Post – Ogalewadi, Taluka –)
Karad, Dist. Satara.) ... Respondents

Ms. Sharmila Kaushik, advocate appointed by the court for the appellant- accused.

P.S. Hingorani, A.P.P. for the respondent- State.

CORAM : SMT. RANJANA DESAI &
D.G. KARNIK, JJ.

DATE ON WHICH THE JUDGMENT

RESERVED : 7TH APRIL, 2006.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 20TH APRIL, 2006.

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. The appellant (for short, "the accused") was tried in the Court of Additional Sessions Judge at Karad in Sessions Case No.56 of 2000 for offences punishable under section 376 of the Indian Penal Code (for short, "the IPC") and sections 3(2)(v) and 3(1)(x), 3(1)(xi) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the said Act").

2. It would be advantageous to give a gist of the prosecution case. Complainant Mangal Govind Bhise resides along with her husband, her children and her brother-in-law at Warana Prakalpa Vasahat, Koyana Siding, Ogalewadi, Taluka Karad. Her husband PW-7 Govind Daji Bhise was working as a labourer in Warana Irrigation Prakalp. The accused was also serving in the same department and he was residing in the same locality. His chawl was at the back of the complainant's room. The accused used to visit the complainant's house and her children used to call the accused Bhai-mama. On 7/8/1994 at about 3.30 p.m., the complainant's daughter Manisha aged about five years was playing with her friend Sheetal in front of

their house under a tree. PW-7 Govind, the husband of the complainant had gone to the saloon for a hair-cut. The complainant was in the house at about 4.30 p.m. Her husband returned from the hair-cutting saloon. At that time, Sheetal, the friend of Manisha came to him and told him that Bhai-mama had taken their daughter Manisha by telling her that he will give her flowers. According to her, the accused had taken Manisha towards the garden. Thereafter, PW-7 Govind went towards the garden. The Rest House belonging to Warana Project Department is situated inside the garden. According to the complainant, her husband PW-7 Govind returned to the house along with Manisha. She asked Manisha as to what had happened. Manisha started weeping and disclosed to them that Bhai-mama had told her that he will give her flowers. He took her in the house situated in the garden; closed the door, made her lie on the cot and removed her nicker. He also removed his pant and underwear and he inserted his penis in her vagina. She, therefore, started crying. According to her, at that time, her father came there. When her father knocked at the door, the accused wore his underwear and pant and opened the door. Her father made her wear her clothes. He slapped the accused and, thereafter, he brought her home. According to the complainant, she and her husband inspected the private parts of Manisha. They noticed that the private parts were reddish and some sticky material was found there. According to the

complainant, they did not report the matter immediately to the police because it concerned the prestige and character of their minor daughter. However, ultimately on 11/8/1994, the complainant lodged the complaint with the police that the accused had committed rape on her daughter Manisha. The said complaint is at Ex-13.

3. On the basis of this complaint, the aforesaid offences came to be registered against the accused. Investigation was started and after completion of investigation, the accused came to be charged as aforesaid. In support of its case, the prosecution examined as many as 12 witnesses. The prosecution examined the complainant PW-1 Mangal and her husband PW-7 Govind. The prosecution also examined PW-2 Dr. Salunkhe, who had examined Manisha. The prosecution examined PW-3 Dr. Jadhav, who had examined the accused. The prosecution examined PW-11 Nalavade, the Special Judicial Magistrate, who had recorded the statement of Manisha under section 164 of the Code of Criminal Procedure. PW-8 Shankar is the pancha to Ex-28, under which clothes of Manisha were seized. PW-10 Kadam is the pancha to Ex-32 under which clothes of the accused were seized. PW-6 Sheetal is the friend of Manisha. The details of investigation were given by PW-12 PSI Rajendra Mokashi.

4. The accused denied the prosecution case. He claimed to be

innocent. According to him, on 31/12/1993, his clothes, cage of hens and compound of his house were burnt. He had given complaint against one Rajendra and son of Indulkar. Those boys were arrested and released on bail. Parents of those boys requested him to take back the complaint. He consulted his officer and his officer told him that if it was not risky, he should withdraw it. The said boys told him that they will not do anything wrong. However, after six months, the present proceedings have been initiated against him.

5. After perusing the evidence on record, the learned Sessions Judge was of the opinion that the prosecution has proved its case beyond reasonable doubt. The accused was, therefore, convicted under section 376(2)(f) of the IPC and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- , in default of payment of fine to suffer further simple imprisonment for six months. The accused was also found guilty and convicted under section 3(1)(x) of the said Act and was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.3,000/- , in default, to suffer further simple imprisonment for three months. The accused was also convicted under sections 3(1)(x) and (xi) of the said Act and was sentenced to suffer rigorous imprisonment for three years each and to pay a fine of Rs.3,000/- each, in default, to suffer further simple imprisonment for three months each. The accused

was also found guilty and convicted of the offence under section 3(2)(v) of the said Act and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer further simple imprisonment for five months. The substantive sentences were ordered to run concurrently. It is this judgment and order which is impugned in this appeal.

6. We have heard, at some length, Ms. Kaushik, the learned counsel appearing for the appellant-accused and Mr. Hingorani, the learned A.P.P. for the State. With the assistance of the learned counsel, we have gone through the evidence and the record of the case.

7. Ms. Kaushik contended that there are serious discrepancies in the evidence of PW-1 Mangal and PW-7 Govind. She submitted that the incident had taken place on 7/8/1994 but the complaint was lodged as late as on 11/8/1994. The learned counsel submitted that this delay in recording the FIR is fatal to the prosecution case and suggests that the police have concocted the case against the accused. The learned counsel submitted that according to PW-5 PC Shaikh, on 7/8/1994 at about 13.00 hours, he had found the accused behaving in a disorderly manner in front of the Rest House of the Koyana Siding Colony. Proceedings under the Bombay Police Act were

initiated against the accused and he was released on personal bond. Ms. Kaushik submitted that if at 1.00 O' clock, the police had initiated the proceedings under the Bombay Police Act against the accused, it is inconceivable that on the same day in the afternoon he would commit rape on Manisha. This story is inherently improbable. Ms. Kaushik submitted that there are discrepancies in the evidence as regards the time when the offence was committed. All this makes the prosecution story suspect. Ms. Kaushik submitted that in any case, even if this court comes to the conclusion that the accused had committed an offence, the conviction under section 3(2)(v) of the said Act is untenable and deserves to be quashed. She submitted that under this section, a person who is not a member of a scheduled caste or a scheduled tribe commits any offence under the IPC punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. Ms. Kaushik submitted that there is no evidence in this case to substantiate the prosecution case that rape was committed by the accused because Manisha is a member of a Scheduled Caste. She submitted that, therefore, in any case, the sentence of life imprisonment deserves to be quashed.

8. Mr. Hingorani, the learned A.P.P. on the other hand, submitted that no case is made out for interference with the impugned judgment and order. He submitted that the mother and the father of Manisha would never involve a wrong person in a serious offence of rape committed against their minor daughter. He submitted that delay in lodging the FIR is explained by the prosecution witnesses by stating that they were hesitant to go to the police because the case involves their minor girl's character. The learned counsel contended that the prosecution witnesses are consistent and, hence, conviction based on their evidence does not deserve to be set aside. The learned A.P.P. contended that the conviction of the accused under section 3 (2)(v) is also borne out by the material on record. PW-7 Govind has stated that when he accosted the accused, the accused replied to him by referring to his caste in a derogatory manner. The accused, therefore, knew that Manisha belonged to a Scheduled Caste and, therefore, the learned Sessions Judge has rightly convicted the accused for offence under section 3(2)(v) of the said Act. The learned A.P.P. urged that the accused is guilty of serious crime. Punishment awarded to him is perfectly justified and the appeal should, therefore, be dismissed.

9. We have considered the submissions of the learned counsel in depth. In our opinion, the prosecution has succeeded in proving that

the accused committed rape on Manisha, beyond reasonable doubt. PW-7 Govind, the father of Manisha is an eye-witness. He has stated that the accused was serving in the Irrigation Department where he was also serving. According to him on the day of incident, he had gone to a hair-cutting saloon. When he came back, Manisha's friend PW-6 Sheetal told him that Bhai-mama (the accused) had taken his daughter Manisha to the garden after telling her that he will give her flowers. He, therefore, went to the garden along with PW-6 Sheetal. He heard the sound of weeping from the room of the Rest House. The sound came through the window of the said room. The glass of the window was broken. He saw from the broken glass that the accused was lying on his daughter Manisha on a cot. He saw him while he was raping his daughter. The accused was without any clothes. He knocked at the door and, thereafter, the accused wore his clothes and came outside by opening the door. He then slapped the accused. The accused told him that he had committed a wrong and that he would not repeat it again. Thereafter, he told the accused that he will not spare him. The accused then abused him by referring to his caste. He uttered "*Ja Mangadya Tula Kay Karayache te Kar*". (Go, Mangadya do what you want.) This witness then entered the room. He noticed semen on the thigh of Manisha. He put the nicker on his daughter and took her outside the room. By the time, his brother came there. He told his brother to take the accused to the police.

Then he went to the police station along with his daughter. According to him, being a poor person, he did not lodge any complaint to the police. He felt uneasy and, therefore, returned to the house along with his daughter. He told his wife about the incident. For two days, he did not know what to do. When his wife verified the facts from their daughter and found that her private parts were swollen, she lodged a complaint with the police. This witness has been cross-examined at length. He has stated that he had narrated the incident to the police orally but he did not lodge report at the police station. It is argued that this witness should be disbelieved because if the incident had taken place on 7/8/1994, he ought to have lodged a complaint with the police immediately. It is also argued that the police did not take down his complaint and waited till the mother lodged the complaint and, therefore, the police have concocted the case. We are not impressed by this submission. PW-7 Govinda is a poor labourer. He has stated that after the incident, he was uneasy. He did not know what to do. Being a poor person, he did not lodge any complaint with the police. He went home and told his wife about the incident. His wife was also under tension and, later on, they lodged the complaint. There is nothing wrong with this conduct. The decision to lodge complaint must have been taken after much deliberation. Any father would be hesitant to approach the police after such an incident. PW-7 Govind and his

wife must be scared to lodge a complaint alleging rape on their minor daughter because that would mean making the incident of rape known to people. They would obviously be worried that a complaint of rape would attach a stigma to Manisha's life. We, therefore, reject the submission that delay in lodging FIR has adversely affected the prosecution case.

10. PW-1 Mangal has stated how she got to know about the incident. She has stated that the accused was serving in the same department in which her husband was serving and, therefore, he used to visit her house and their children used to call him Bhai-mama. She has stated that it is PW-6 Sheetal, who came and told her that Bhai-mama had taken Manisha to the garden. Thereafter, her husband went to the garden and brought her daughter home. She has further stated that her husband told her that he had seen the accused raping Manisha. She has given all the details which she got to know from her husband and Manisha. She has stated that she then inspected the private parts of her daughter. She found that there was swelling and bleeding. According to her, she did not immediately lodge the complaint as her daughter was small and she thought that it will affect her character and after 3-4 days, she lodged the complaint. This witness was cross-examined at length. In her cross-examination, she has not deviated from what she has stated in her

examination-in-chief. We find PW-1 Mangal and PW-7 Govind to be reliable witnesses. PW-1 has given acceptable reason why complaint (Ex-13) came to be recorded three days after the incident. The explanation given by both these witnesses for delay in lodging FIR is truthful, realistic and consistent with the conduct of parents of a minor girl whose anxiety would be to keep the rape committed on their daughter a secret for fear of ruining her reputation and matrimonial prospects.

11. PW-2 Dr. Salunkhe had examined Manisha on 11/8/1994 at the Cottage Hospital, Karad. She has stated that on internal examination, she found the presence of congestion on mucosa area of vagina and around urethra. Her observation was “hymen shows tear on left lateral side irregular in shape 1/2” reddish, edimatus, inflammation present”. According to her, the age of injuries was 4 to 5 days. She has categorically stated that the victim was raped. Ex-16 are the case papers of Manisha. At the relevant time, Manisha was aged about 4 years. In the cross-examination of this witness, the defence has not been able to elicit anything which would discredit her. We have, therefore, no hesitation in concurring with the trial court that Manisha was, in fact, raped.

12. PW-3 Dr. Jadhav had examined the accused on 12/8/1994.

The medical report of examination of the accused is produced by him. It is at Ex-18. As per this report, the accused was able to have sexual intercourse.

13. PW-4 Mr. Pawar was working as the Sub Divisional Officer in the Irrigation Department. He has stated that the accused and PW-7 Govind were working in the Irrigation Department. The accused was on Rest House duty as watchman and he had the keys of the Rest House. On the day of the incident, this witness was at his residence. At 5.00 p.m. some people came to his house shouting loudly. They disclosed to him the incident of rape committed by the accused. He asked the accused about the incident. According to him, the accused told him that he had committed a wrong. He asked the people to follow the procedure. The evidence of this witness establishes that the accused was in charge of the Rest House where the rape was committed. He had the keys of the Rest House. He has also spoken about the extra judicial confession made by the accused to him that he had committed a wrong.

14. PW-5 PC Shaikh has stated that on 7/8/1994 at about 13.00 hours, the accused was found behaving in a disorderly manner near Koyana Siding Colony. Proceedings under the Bombay Police Act were initiated against him. At about 17.00 hours, PW-7 Govind along

with his daughter Manisha came to him and told him that the accused had committed rape on Manisha. He told PW-7 Govind that he should give a complaint in writing. By the time, people had brought the accused to him. He asked the accused about the alleged incident but the accused gave evasive reply. He has stated that when HC Kamble asked PW-7 Govind to give complaint, PW-7 Govind told him that his daughter is a minor and it involves her dignity and character and, therefore, he will discuss the matter with his relatives and then lodge the complaint. He has categorically stated that at that time, PW-7 Govind did not lodge complaint. The extra judicial confession made by the accused to this witness cannot be taken into consideration because this witness is a police constable. We also do not attach much importance to the alleged proceedings initiated under the Bombay Police Act against the accused. What is relevant is the fact that PW-7 Govind told the police that since the incident involves the dignity and character of his minor daughter, he will consult his relatives and then lodge the complaint. PW-5 PC Shaikh has confirmed the case of the prosecution as regards delay in lodging the FIR.

15. PW-6 Sheetal is the friend of Manisha. She was playing with Manisha, at the relevant time. She has given details as to how the accused took Manisha to the garden; how she went

to inform Manisha's father and how she accompanied Manisha's father to the garden and what she saw when she entered the room. She has been cross-examined. However, the cross-examination has not created any dent in her testimony. She supports the evidence of PW-7 Govind. There is, therefore, no doubt that the accused is guilty of the heinous crime of rape and his conviction under section 376(2)(f) is perfectly justified. His conviction under sections 2(1)(x) and (xi) of the said Act is also justified because Manisha belongs to a Scheduled Caste.

16. We, however, feel that the conviction of the accused under section 3(2)(v) of the said Act is unsustainable. Sections 3(2)(v) reads thus:

> *"3. Punishments for offences of atrocities. -*
>
> *(1) x x x*
>
> *(2) Whoever, not being a member of a Scheduled Cate or a Scheduled Tribe, -*
>
> *(i) x x x*
>
> *(ii) x x x*
>
> *(iii) x x x*
>
> *(iv) x x x*

> *(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"*

17. A person, who is not a member of a Scheduled Caste or a Scheduled Tribe can be convicted under this section only if he commits any offence under the IPC punishable with imprisonment for a term of 10 years or more against a person on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe. In this case, the accused being a Muslim is not a member of a Scheduled Caste or a Scheduled Tribe. He has been convicted under section 376(2)(f) of the IPC and sentenced to suffer rigorous imprisonment for 10 years. PW-1 Mangal, the mother of Manisha has stated that her husband and father belong to Hindu Mang community. PW-7 Govind has also stated that he belongs to Mang community. PW-4 Pawar, the Sub Divisional Officer of Irrigation Department in which PW-7 Govind was working, has confirmed that PW-7 Govind belongs to Matang community. Therefore, there can be

no doubt that Manisha is a member of a Scheduled Caste. Obviously, therefore, three conditions requisite for conviction under section 3(2)(v) are present in this case. However, in our opinion, the fourth and most important condition is not fulfilled in this case. There is no evidence to indicate that the accused had committed this offence against Manisha on the ground that she is a member of a Scheduled Caste. PW-7 Govind has stated that after the incident, when he told the accused that he will not spare him, the accused said "*Ja Mangadya Tula Kay Karayache te Kar*". Undoubtedly, the accused used derogatory words. He referred to the caste of PW-7 Govind in a derogatory manner and insulted him but, there is no evidence to establish that the accused committed rape on the ground that Manisha belonged to a Scheduled Caste. In our opinion, to prove charge under section 3(2)(v) of the said Act in a given case, the prosecution will have to establish that not only that the accused knew that the victim belonged to a Scheduled Caste or a Scheduled Tribe but the prosecution must further establish that the accused had the intention to commit the offence against a person or property belonging to a Scheduled Caste or a Scheduled Tribe because he had a grudge against that Scheduled Caste or Scheduled Tribe or that he wanted to take revenge against the members of that Scheduled Caste or Scheduled Tribe. It must be established that he was motivated to commit the crime because of a deep rooted hatred for that caste or

tribe. There may be various circumstances which the prosecution can prove to enable the court to draw such a conclusion. In such cases, it may be proved that the offence was committed solely on the ground that the victim belonged to a Scheduled Caste or a Scheduled Tribe and the accused may not have committed it if the victim did not belong to a Scheduled Caste or a Scheduled Tribe. In the absence of any circumstances indicating that the accused committed rape because Manisha belonged to a Schedule Caste or a Scheduled Tribe, we find it difficult to convict him of the offence under section 3(2)(v) of the said Act.

18. In this connection, we may usefully refer to the judgment of the Madhya Pradesh High Court in *Phulsingh v. State of Madhya Pradesh, 1991 Cri.L.J. 2954*. In that case, the Madhya Pradesh High Court was concerned with section 7(1)(d) of the Protection of Civil Rights Act (22 of 1955). Section 7(1)(d) thereof reads thus:

> *"7. Punishment for other offences arising out of "untouchability" - (1) Whether -*
>
> *(a) x x x*
>
> *(b) x x x*
>
> *(c) x x x*

(d) insults or attempts to insult, on the ground of "untouchability" a member of Scheduled Caste".

19. The Madhya Pradesh High Court observed that insult simpliciter of a member of Scheduled Caste is not within the mischief of clause (d) of sub-section (1) of section 7. It is further necessary that the insult must have been committed "on the ground of untouchability". It was further observed that the question is what is the test to determine whether the insult was or was not "on the ground of untouchability"? According to the Madhya Pradesh High Court, the test is to ask the question, whether insult would have taken place irrespective of the fact whether the victim was or was not a member of the Schedule Caste. If yes, the insult was insult simpliciter outside the ambit of clause (d). On the other hand, if insult had taken place only because the victim was a member of Scheduled Caste and it would not have taken place if he had been of higher caste, then insult was insult on the ground of untouchability. It was further observed that another rough and ready test, though not very infallible, would be to ask the question whether insult was part of personal quarrel which took place between a person of higher caste and a member of scheduled caste; or was the insult offered in cool and studied manner in the absence of any quarrel. In the first

situation, the insult would most likely be insult simpliciter while in the second situation it would be insult on the ground of untouchability.

20. In *Rajachandra v. State of Kerala, 1996(3) Crimes 169*, the Kerala High Court was concerned with a similar question. The accused was charged for having committed rape on a minor girl belonging to Scheduled Caste. He was also charged under section 3 (2)(v) of the said Act. The Kerala High Court held that to attract section 3(2)(v), the following ingredients must be established.

1) *"The offender should not be member of a Scheduled Caste or a Schedule Tribe;*

2) *he must commit an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more;*

3) *the commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;*

4) the offence must have been committed on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe."

21. In the facts of the case before it, the Kerala High Court held that no evidence was adduced by the prosecution to show that the accused committed rape on PW-1 on the ground that she is a member of a Scheduled Caste. It was observed that it is not enough if the victim is a member of a Scheduled Caste or a Scheduled Tribe. The offence must have been committed because the victim is a member of a Scheduled Caste or a Scheduled Tribe. It was further observed that the cause for the offence must contain an element of racial prejudice.

22. The Gujarat High Court also had an occasion to deal with an identical question. In *Lalubha Keshrisinh Garasia and etc., v. State of Gujarat and others, 1997 Cri.L.J. 3847*, the accused were charged under section 307 read with section 34 of the IPC and under section 3(2)(v) of the said Act. Quoting Section 3(2)(v) of the said Act, the Gujarat High Court observed that the offence under the IPC should be established to have been committed on the ground that the injured person against whom the offence is committed is a member of

a Scheduled Caste or a Scheduled Tribe. It is not sufficient that the injured person should be a member of either but further it is required to be proved that the offence has been committed on the ground of victim being a member of a Scheduled Caste or a Scheduled Tribe. It was further observed that in the absence of this material, merely because the injured happens to be a member of a Scheduled Caste or a Scheduled Tribe automatically the offence under section 3(2)(v) of the said Act is not made out. In the facts before it, the Gujarat High Court held that there was no material on record indicating that the offence was committed on the ground that the injured was a member of a Scheduled Caste. In the circumstances, the conviction under the said provision was set aside.

23. In our opinion, in the present case also there is no evidence to establish that the offence of rape was committed on Manisha because she was a member of a Scheduled Caste. It is true that after the offence was committed, the accused abused the father of Manisha and addressed him in a derogatory manner by taking the name of his caste. But that is not sufficient to establish that the accused raped Manisha on the ground that she belonged to a Scheduled Caste. There is no evidence to show that the accused was motivated by any vendetta. There was no racial tinge to the offence. Conviction of the accused under section 3(2)(v) of the said Act will have to be, therefore,

set aside.

24. Before we close, we would like to mention that practice of quoting head notes of reported Supreme Court judgments and placing reliance on them is improper. Head notes are often misleading. It is better to read the entire judgment and apply its ratio to the facts of the case. The learned Sessions Judge has referred to the judgment of the Supreme Court in *Kanbi Nanji Virji v. State of Gujarat, AIR 1970 SC 219*. The head note is quoted in the following manner :

> *"(A) Cr.P.C. (1898) Sec. 423 –- Appreciation of evidence – by appellant court - Evidence of prosecution witnesses - Truth and falsehood not separable –- Entire evidence has to be rejected."*

The learned Sessions Judge has then stated that this authority is applicable to the appellate court. This is a wrong approach. Principles underlying appreciation of evidence are applicable to all courts alike. There are no separate principles for different courts. The distinction made by the learned Sessions Judge on the basis of the head note is not proper. We hope that this practice is not followed in future.

25. In the view that we have taken and for the reasons stated hereinabove, we dispose of the appeal with the following order :

O R D E R

"The conviction of the accused - Bandu Hasan Tamobli under section 376(2)(f) of the IPC is confirmed. His sentence of rigorous imprisonment for 10 years and fine of Rs.10,000/- , in default of payment of fine, to suffer further simple imprisonment for six months is maintained. The conviction of the accused under section 3(1)(x) of the said Act and his sentence to suffer rigorous imprisonment for three years and to pay fine of Rs.3,000/- , in default, to suffer further simple imprisonment for three months is also maintained. The conviction of the accused under section 3(1)(xi) of the said Act and his sentence to suffer rigorous imprisonment for three years and to pay a fine of Rs.3,000/- , in default, to suffer further simple imprisonment for three months is also

confirmed. Substantive sentences shall run concurrently.

The conviction of the accused under section 3(2)(v) of the said Act and his sentence to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- , in default, to suffer further simple imprisonment for five months is, however, set aside. We maintain the order passed by the Sessions Judge as regards disbursement of the fine amount.

The appeal is disposed of in the aforestated terms."

(SMT. RANJANA DESAI, J.)

(D.G. KARNIK, J.)